

OCT 15 1992

OF MONTANA

STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NO. 11-91

EXECUTIVE ORDER
CREATING THE DEPARTMENT OF TRANSPORTATION

WHEREAS, the 52nd Legislative Assembly enacted Senate Bill 164, "AN ACT TO CREATE A DEPARTMENT OF TRANSPORTATION; TO ABOLISH THE DEPARTMENT OF HIGHWAYS AND TRANSFER ITS FUNCTIONS AND CERTAIN FUNCTIONS OF THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF TRANSPORTATION; TO GENERALLY REVISE THE LAWS TO CONFORM TO THE ABOLISHMENT OF THE DEPARTMENT OF HIGHWAYS AND TRANSFER OF FUNCTIONS TO THE DEPARTMENT OF TRANSPORTATION; AMENDING SECTIONS 2-15-104, 2-15-1812, 2-15-2501, 2-15-2502, 15-1-701, AND 60-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, as a result of this legislation, various functions and responsibilities previously conducted by the Departments of Commerce, Revenue and Highways have been consolidated within the Department of Transportation; and

WHEREAS, Senate Bill 164 requires the Governor to implement the provisions of Sections 1 through 14 of Senate Bill 164 through Executive Order.

NOW, THEREFORE, I, STAN STEPHENS, Governor of the State of Montana, pursuant to the authority vested in me as Governor under the Constitution and laws of the State of Montana, do hereby order the following:

Section 1. Department of Highways

The Department of Highways is abolished and its functions are transferred to the Department of Transportation;

Section 2. Department of Transportation

The Department of Transportation is hereby created;

Section 3. Department of Transportation Director

The Department of Transportation head is the Director of Transportation, appointed by the Governor. Such appointment is made concurrently with the issuance of this Order and is filed with the Secretary of State.

Section. 4. Department of Transportation divisions

The Department of Transportation shall provide those divisions as are necessary but shall have divisions of:

- (a) Highways
- (b) Aeronautics
- (c) Administration
- (d) Rail and Transit
- (e) Motor Carrier Services

Section 5. Board of Aeronautics:

The Board of Aeronautics is allocated to the Department of Transportation for administrative purposes only as prescribed in section 2-15-121, MCA. The director of the Department of Transportation will represent the Board of Aeronautics in communications with the Governor.

Section 6. Administrator of the Aeronautics Division:

The administrator of the Aeronautics Division is hereby designated as liaison between the Board of Aeronautics and the Department of Transportation. In accordance with 2-15-121, MCA, the Aeronautics Division will:

- (a) direct and supervise the budgeting, record keeping, reporting and related administrative and clerical functions of the Board of Aeronautics;
- (b) include the Board of Aeronautics budgetary request in the Aeronautics Division budget;
- (c) collect all revenues for the Board of Aeronautics and deposit them in the proper fund or account;
- (d) provide staff for the Board of Aeronautics;
- (e) print and disseminate for the agency any required

notices, rules or orders adopted, amended or repealed by the Board of Aeronautics;

- (f) allocate office space to the Board of Aeronautics, as necessary, subject to the approval of the department of administration.

Section 7. Highway Commission

The Highway Commission is allocated to the Department of Transportation for administrative purposes only as prescribed in section 2-15-121, MCA. The Director of the Department of Transportation will represent the Highway Commission in communications with the Governor.

Section 8. Highway Division Administrator

The administrator of the Highway Division is hereby designated as liaison between the Highway Commission and the Department of Transportation. In accordance with 2-15-121, MCA, the Highway Division will:

- (a) direct and supervise the budgeting, record keeping, reporting and related administrative and clerical functions of the Highway Commission;
- (b) include the Highway Commission budgetary request in the Highway Division budget;
- (c) provide staff for the Highway Commission;
- (d) print and disseminate for the agency any required notices, rules or orders adopted, amended or repealed by the Highway Commission;
- (e) allocate office space to the Highway Commission, as necessary, subject to the approval of the department of administration.

Section 9. Department of Commerce

The Department of Commerce shall transfer to the Department of Transportation the following functions:

- (a) developing, encouraging, regulating and licensing aeronautics in accordance with Title 67, chapter 2, MCA;
- (b) the allocation of funds for public transportation under section 7-14-102, MCA;

(c) the allocation of funds for aeronautics under sections 67-1-301 and 15-70-204, MCA;

(d) transloading facilities under section 7-14-120, MCA;

(e) rail planning activities in Title 60, Chapter 11, MCA;
and

(f) state representation activities on public transportation under section 60-21-101, MCA.

Section 10. Department of Revenue

The Department of Revenue shall transfer to the Department of Transportation motor fuel functions as prescribed in Title 15, Chapter 70, MCA.

Section 11. Department to collect motor fuel taxes

The Department of Transportation is authorized to issue warrants for distraint as provided in Title 15, Chapter 1, part 7, MCA, to collect motor fuel taxes and to enforce the provisions of this law.

Section 12. Rulemaking authority

Any existing authority of the Department of Highways, the Department of Commerce or the Department of Revenue to make rules on the various functions transferred by the provisions of Senate Bill 164 is hereby transferred to the Department of Transportation.

Section 13. Appropriation authority

All appropriation authority and FTE relative to the departments involved in the consolidation are transferred to the Department of Transportation. Such authority includes appropriation authority within House Bill 2, the 52nd Legislative Session adopted statewide pay plan, and such other budget authority provided in legislation. The Office of Budget and Program Planning is authorized to resolve any remaining issues involving budget authority transfer upon consultation with the directors.

Section 14. Transfer of assets, personnel records, accounts, etc.

The provisions of 2-15-125 through 2-15-137, MCA, shall apply in regard to the transfer of assets, personnel records, accounts, liabilities from the Departments of Highways, Commerce and Revenue

to the Department of Transportation as affected by SB 164.

Section 15. Budgeting and Accounting System Agency Code

The Department of Transportation shall use the statewide Budgeting and Accounting System (SBAS) agency code identified as 5401.

Section 16. Transfer of grant and contract authority

Subject to the provisions of 2-15-135, MCA, and 2-15-137, MCA, all grant and contract authority of the identified departments affected by Senate Bill 164 are transferred to the Department of Transportation.

Section 17. Procedure regarding current litigation

Pending litigation which affects the departments previous to the implementation of the Department of Transportation shall be jointly represented by the affected department and the Department of Transportation. This shall be accomplished, where appropriate, by designation of co-counsel representation of the state interest from the previous department and the Department of Transportation.

In the event resolution of cases affected by the departments cannot be attained by the departments, the Chief Legal Counsel, Office of the Governor, is delegated such authority to assure that continuity of legal representation is made by the appropriate departments' including, where appropriate, representation and defense from the Tort Claims Division, Department of Administration. Chief legal counsels shall assure that legal counsel are listed on the pleadings of both departments and proper appearances are made.

Section 18. Memorandums of Understanding

The Memorandums of Understanding effective July 1, 1991, between the Department of Revenue and the Department of Highways regarding the transfer of the Motor Fuels Division and the Department of Commerce and the Department of Highways Division regarding the transfer of the aeronautics and transportation divisions, are attached hereto and made a part of this Order.

Section 19. Resolution of disputes between departments

If a dispute shall arise as to the transfer of assets or other

issues affecting the creation of the Department of Transportation, the department directors shall attempt to resolve the dispute. In the event the issue cannot be resolved, the department directors shall immediately inform the Governor's Chief of Staff, Chief Legal Counsel, and Budget Director. The departments shall provide such necessary written correspondence outlining the position of each department. Direction shall be immediately forthcoming from the Office of the Governor through the Budget Director to resolve the dispute. Such direction shall be binding on all executive agencies.

Previous Executive Orders

All previous executive orders in conflict with this Order are hereby void and without effect.

Effective Date

This order is effective July 1, 1991.

GIVEN under my hand and the GREAT
SEAL of the State of Montana this
2 day of July in the year of
our LORD, One Thousand Nine Hundred
and Ninety-one.

Stan Stephens
STAN STEPHENS
Governor

ATTEST:

Mike Cooney
MIKE COONEY, Secretary of State